A

ADVANCE SYNERGY CAPITAL SDN BHD

v.

THE MINISTER OF FINANCE, MALAYSIA & ANOR

B

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
SYED AHMAD HELMY JCA
MOHAMED APANDI ALI JCA
[CIVIL APPEAL NO: W-01(IM)-56-2011]

C

11 APRIL 2011

ADMINISTRATIVE LAW: *Judicial review - Judicial review proceedings - Intervention - Appeal against - Whether High Court correct in granting second respondent leave to intervene at leave stage of*

D

application for judicial review - Whether second respondent had direct interest in outcome of judicial review application for leave at threshold stage - Whether judge demonstrated proper exercise of discretion under O. 53 r. 8(1) Rules of the High Court 1980 - Whether appellate interference warranted

E

CIVIL PROCEDURE: *Intervention - Judicial review proceedings - Appeal against - Whether High Court correct in granting second respondent leave to intervene at leave stage of application for judicial review - Whether second respondent had direct interest in outcome of*

F

judicial review application for leave at threshold stage - Whether judge demonstrated proper exercise of discretion under O. 53 r. 8(1) Rules of the High Court 1980 - Whether appellate interference warranted

CIVIL PROCEDURE: *Parties - Intervention - Appeal against - Whether High Court correct in granting second respondent leave to*

G

intervene at leave stage of application for judicial review - Whether second respondent had direct interest in outcome of judicial review application for leave at threshold stage - Whether judge demonstrated proper exercise of discretion under O. 53 r. 8(1) Rules of the High Court 1980 - Whether appellate interference warranted

H

This was an appeal by the appellant Advance Synergy Capital Sdn Bhd ("ASC") against the order of the Kuala Lumpur High Court granting leave to ACE INA International Holdings Ltd ("ACE") to intervene as the second respondent at the threshold stage of

I

ASC's application for judicial review. ASC had commenced the judicial review proceedings before the High Court, seeking an order of *certiorari* to quash the approval of the Minister of Finance

(MOF approval) which was granted to ACE for the execution of a Sale and Purchase Agreement. The counsel for ASC subscribed to the view that at the leave stage of the judicial review proceedings, only the Attorney General and the putative respondent could be heard and that under O. 53 r. 8(1) of the Rules of the High Court 1980 ('RHC'), ACE could only be heard at the judicial review proceedings after leave had been granted. However, the counsel for ACE stressed that at the leave stage of the judicial review proceedings, ACE being the recipient of the MOF approval would be directly affected by the outcome of the challenge by ASC to the MOF approval in the judicial review proceedings and so ACE was the proper person to be heard. The question that arose was whether, upon a true construction of O. 53 r. 8(1) of the RHC, the High Court was correct in granting ACE leave to intervene as the second respondent at the leave stage of ASC's application for judicial review to challenge the MOF approval.

Held (dismissing the appeal; affirming High Court order)
Per Low Hop Bing JCA delivering the judgment of the court:

(1) The word "application" in O. 53 cumulatively covers the two stages *ie*, the leave application at the threshold stage as well as the substantive stage after leave has been granted. Similarly, the expression "an application for judicial review" in O. 53 r. 8(1) and (2) would also include the two stages which are the essential characteristics prevailing in an application for judicial review. The submission presented for ASC that leave may be granted to ACE to intervene at the substantive application for judicial review should also apply equally to the threshold stage as well. There was no plausible reason to exclude a proper party or person to be granted leave to intervene as a respondent at the leave stage. In such circumstances, inclusivity rather than exclusivity should be the norm, so as to ensure fairness to the party who has a direct interest in the matter. (para 25)

(2) Order 53 r. 8(1) confers upon the judge a wide discretion to hear a proper party or person in opposition to an "application for judicial review" so long as the conditions contained therein had been fulfilled, *viz* (i) the person desired to be heard in opposition to the application and (ii) that person appeared to the judge to be a proper person to be heard, notwithstanding

A that he had not been served with the cause papers in the matter. Herein, so long as the judge had demonstrated a proper exercise of discretion under O. 53 r. 8(1), on the basis of the facts and circumstances prevailing in each particular case, and established judicial principles, this court would be B slow in embarking on an appellate interference. (para 26)

(3) The second respondent was the recipient of the MOF approval which was being challenged by way of judicial review. The second respondent was directly involved in the MOF C approval and would be directly affected by the outcome of the judicial review proceedings. The second respondent clearly had a direct interest in the outcome of ASC's application for leave at the threshold stage, and so ought to be added as a party to the proceedings. In the context herein, justice and fairness D dictate the necessary inclusion of the second respondent as a party to canvass their opposition on a subject matter directly affecting their interest. Order 53 r. 8(1) could therefore be invoked to allow the second respondent to appear as a proper party to oppose ASC's application at the leave stage. The E High Court judge had correctly exercised the discretion under O. 53 r. 8(1). (para 28)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu Advance Synergy Capital Sdn Bhd F ('ASC') terhadap perintah Mahkamah Tinggi Kuala Lumpur yang telah memberi kebenaran kepada ACE INA International Holdings Ltd ("ACE") untuk mencelah sebagai responden kedua pada peringkat puncak permohonan ASC untuk semakan kehakiman. ASC telah memulakan prosiding semakan kehakiman di hadapan G Mahkamah Tinggi, memohon perintah *certiorari* untuk membatalkan kelulusan Menteri Kewangan (kelulusan MK) yang telah diberi kepada ACE bagi pelaksanaan perjanjian jualbeli. Peguam ASC mengambil pandangan bahawa pada peringkat memberi kebenaran prosiding semakan kehakiman, hanya Peguam Negara dan H responden putatif boleh dibicarakan dan di bawah A. 53 k. 8(1) Kaedah-Kaedah Mahkamah Tinggi 1980, ACE hanya boleh dibicarakan di prosiding semakan kehakiman selepas kebenaran diberi. Bagaimanapun, peguam ACE menegaskan bahawa pada peringkat kebenaran prosiding semakan kehakiman, ACE sebagai I penerima kelulusan MK akan terjejas secara terus oleh hasil cabaran ASC ke atas kelulusan MK di dalam prosiding semakan kehakiman dan oleh itu ACE adalah pihak yang sesuai untuk

dibicarakan. Soalan yang timbul adalah sama ada, atas pentafsiran betul A. 53 k. 8(1) KMR, Mahkamah Tinggi adalah betul dalam memberi kebenaran kepada ACE untuk mencelah sebagai responden kedua pada peringkat kebenaran permohonan ASC untuk semakan kehakiman mencabar kelulusan MK.

Diputuskan (menolak rayuan; mengesahkan perintah Mahkamah Tinggi)
Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) Perkataan "permohonan" di dalam A. 53 secara kumulatif meliputi dua peringkat iaitu permohonan kebenaran pada peringkat puncak dan juga pada peringkat substantif selepas kebenaran diberi. Serupa itu, maksud ungkapan "permohonan untuk semakan kehakiman" di bawah A. 53 k. 8(1) dan (2) juga meliputi dua peringkat iaitu ciri-ciri penting lazim dalam satu permohonan semakan kehakiman. Hujahan yang dibuat untuk ASC bahawa kebenaran boleh diberikan kepada ACE untuk mencelah pada permohonan substantif untuk semakan kehakiman juga patut digunapakai pada peringkat puncak. Tiada sebab munasabah untuk mengecualikan satu pihak wajar dari mendapatkan kebenaran untuk mencelah sebagai responden pada peringkat kebenaran. Dalam keadaan sedemikian, inklusiviti daripada eksklusiviti sepatutnya menjadi kebiasaan, supaya dapat memastikan keadilan kepada pihak yang mempunyai kepentingan terus dalam perkara itu.

(2) Aturan 53 k. 8(1) memberikan kepada hakim budibicara luas untuk mendengar pihak yang sesuai menentang "permohonan semakan kehakiman" selagi syarat-syarat terkandung di dalamnya telah dipenuhi, iaitu (i) pihak yang ingin dibicarakan dalam penentangan permohonan dan (ii) pihak berdiri di hadapan hakim sebagai pihak yang sesuai untuk dibicarakan, walaupun pihak itu tidak diberi kertas guaman berkenaan perkara itu. Di sini, selagi hakim menunjukkan pelaksanaan budibicara yang betul di bawah A. 53 k. 8(1), atas dasar fakta-fakta dan keadaan-keadaan yang berbangkit di dalam setiap kes tertentu, dan prinsip-prinsip mantap kehakiman, mahkamah enggan campurtangan dalam rayuan.

(3) Responden kedua adalah penerima kelulusan MK yang dicabari melalui semakan kehakiman. Responden kedua sememangnya terlibat di dalam kelulusan MK dan akan terjejas secara langsung oleh hasil prosiding semakan hakiman. Dengan jelasnya responden kedua memang mempunyai kepentingan langsung dalam hasil permohonan ASC untuk kebenaran pada peringkat puncak, dan oleh itu seharusnya dijadikan pihak kepada prosiding. Di dalam konteks di sini, keadilan dan kesaksamaan mengarahkan kemasukan perlu responden kedua sebagai pihak untuk mengemukakan bantahan mereka atas halperkara yang menjejaskan kepentingan mereka. Arahan 53 k. 8(1) oleh itu boleh digunakan untuk membenarkan responden kedua untuk menghadirkan diri sebagai pihak yang sesuai untuk membantah permohonan ASC pada peringkat kebenaran. Hakim Mahkamah Tinggi telah dengan betul melaksanakan budibicaranya di bawah A. 53 k. 8(1).

Case(s) referred to:

Bursa Malaysia Securities Bhd v. Gan Boon Aun [2009] 5 CLJ 698 CA ***(refd)***

Caswell And Another v. Dairy Produce Quota Tribunal For England And Wales [1990] 2 All ER 434 ***(refd)***

Chin Mee Keong & Ors v. Pesuruhjaya Sukan [2007] 5 CLJ 363 CA ***(refd)***

George John v. Goh Eng Wah Bros Film Sdn Bhd & Ors [1987] 1 LNS 111 HC ***(refd)***

Inland Revenue Commissioners v. National Federation of Self-Employed and Small Business Ltd [1982] AC 617 ***(refd)***

Kanawagi Seperumaniam v. Dato' Abdul Hamid Mohamad [2004] 5 MLJ 495 ***(refd)***

Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(refd)***

Mohd Nordin Johan v. The Attorney-General, Malaysia [1983] 1 CLJ 130; [1983] CLJ (Rep) 271 FC ***(refd)***

R v. Camden London Borough Council, Ex Parte Martin [1997] 1 All ER 307 HC ***(refd)***

R v. Secretary of State for the Home Department, Ex Parte Rukshanda Begum [1990] Crown Office Digest 109, DIP, CA (UK) ***(refd)***

R v. Stratford-On-Avon District Council and Another, ex parte Jackson [1985] 3 All ER 769 CA ***(refd)***

Ta Wu Realty Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor [2004] 6 CLJ 398 HC ***(refd)***

Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors [2006] 1 CLJ 927 CA ***(refd)***

Tuan Sarip Hamid & Anor v. Patco Malaysia Berhad [1995] 3 CLJ 627 SC ***(refd)***

Legislation referred to:
Arbitration Act 2005, s. 10
Insurance Act 1996, s. 67
Rules of the High Court 1980, O. 53 rr. 3(1), (3), (6), 4(1), (2), 8(1), (2)

Supreme Court Act 1981 [UK], s. 31(6), (7)

Other source(s) referred to:
Michael Supperstone QC & James Goudie QC, *"Judicial Review"* (1997), pp 16.4 & 16.6 - 16.7

For the appellant - Dato' Harpal Singh Grewal (Teh Boon Eng with him); M/s Teh & Assocs
For the 1st respondent - Noor Hisham Ismail SFC; AG's Chambers
For 2nd respondent - Dato' Dr Cyrus Das (Wong Wye Wah with him); M/s Kadir Andri & Partners

[Appeal from High Court, Kuala Lumpur; Application for Judicial Review No: RS-25-469-2010]

Reported by Suhainah Wahiduddin

JUDGMENT

Low Hop Bing JCA:

Appeal

[1] This is an appeal by the appellant Advance Synergy Capital Sdn Bhd ("ASC") against the order of the Kuala Lumpur High Court dated 14 January 2011 granting leave to ACE INA International Holdings Ltd ("ACE") to intervene as the 2nd respondent at the threshold stage of ASC's application for judicial review.

[2] We now give our grounds for dismissing ASC's appeal.

Factual Background

[3] ASC and ACE own 49% and 51% respectively of the entire issued and paid-up capital in Advance Synergy Insurance Bhd ("ASIB").

[4] Pursuant to an agreement dated 12 August 2008 (as amended by a letter dated 20 August 2008) and the amended and restated shareholders agreement ("the ARSA") dated 1 January

2009 entered into between three parties *viz* ASC, ACE and Advance Synergy Berhad, ACE was granted a Call Option to purchase ASC's 49% of the issued and paid-up share in ASIB ("the option shares"), subject to the terms and conditions of the draft sale and purchase agreement ("the SPA") set out in sch. 1 to the ARSA. The parties further agreed that the execution of the SPA is subject to the prior approval of the Minister of Finance acting on the recommendation of the Central Bank ("Bank Negara") under the Insurance Act 1996 ("the MOF Approval").

[5] Prior to the ARSA, ACE had *vide* Bank Negara's letter dated 28 August 2007 obtained 'in principle' approval consistent with Circular JPI: 27/1998 entitled "Acquisition or Disposal of Interest in Shares of an Insurer".

[6] ACE exercised the Call Option on 4 February 2009 and notified ASC on 10 February 2009.

[7] In anticipation of the exercise of the call option and as envisaged in cl. 6.01 of the ARSA, *vide* letter dated 3 February 2009, ACE requested ASC to give its consent to ACE's application for the MOF Approval under s. 67 of the Insurance Act 1996 ("s. 67"). ASC failed to accede to ACE's request, but had instead sought to delay and/or thwart ACE's application.

[8] ACE then initiated High Court Originating Summons No. D-24NCC-72-2009, seeking a mandatory order to compel ASC to forthwith give its written consent and provide documents and information to Bank Negara and/or the Minister of Finance in respect of ACE's application for the MOF Approval required under s. 67 ("the 1st OS Proceedings"). ASC made an application to stay the 1st OS Proceedings pursuant to s. 10 of the Arbitration Act 2005 ("the stay application") pending reference to arbitration. This stay application was heard and dismissed by the High Court on 5 April 2010. The 1st OS was heard and allowed on 12 May 2010. ASC then gave its letter of consent on 21 May 2010.

[9] On 26 May 2010, ACE submitted its application to Bank Negara for the MOF Approval which was granted on 9 September 2010.

[10] Pursuant to the MOF Approval and the terms of the ARSA, ACE *via* its solicitors requested ASC to execute the SPA and other relevant documents to complete the acquisition of the Option Shares, but ASC declined to do so. ACE then initiated

High Court Originating Summons No. D-24NCC-332-2010 ("the 2nd OS Proceedings"), seeking various orders to compel ASC to give effect to the acquisition of the option shares. ACE obtained an order in terms of the 2nd OS.

[11] On 18 October 2010, ASC commenced the judicial review proceedings before the High Court, seeking an order of *certiorari* to quash the MOF Approval. At the leave stage of the judicial review proceedings, ACE made an application for leave to intervene as the 2nd respondent. The High Court allowed ACE's application. ACE has since been added as the 2nd respondent.

[12] Hence, the instant appeal by ASC.

Leave To Intervene

[13] Dato' Harpal Singh Grewal (assisted by Mr Teh Boon Eng) learned counsel for ASC subscribed to the view that at the leave stage of the judicial review proceedings, only the Attorney General (in the case of an application touching on public interest) and the putative respondent can be heard. They advocated that under O. 53 r. 8(1) of the Rules of the High Court 1980, ACE could only be heard at the judicial review proceedings after leave has been granted. (For brevity and convenience, a reference hereinafter to an order and a rule is a reference to that order and rule in the Rules of the High Court 1980).

[14] Dato' Dr Cyrus Das (Mr Wong Wye Wah with him) stressed that at the leave stage of the judicial review proceedings, ACE being the recipient of the MOF Approval would be directly affected by the outcome of the challenge by ASC to the MOF Approval in the judicial review proceedings and so ACE is a proper person to be heard. They added that ACE has been correctly granted leave to intervene as the 2nd respondent at the threshold stage.

[15] The question which we have to answer may be formulated as follows:

> On the basis of the above factual background, and upon a true construction of O. 53 r. 8(1), was the High Court correct in granting ACE leave to intervene as the 2nd respondent at the leave stage of ASC's application for judicial review to challenge the MOF Approval?

[16] The answer to the above question would perforce include a detailed discussion of:

(i) The two stages of judicial review proceedings under O. 53;

(ii) Attorney General's *locus standi* and the putative respondent's position at the leave stage of an application for judicial review under O. 53 r. 3; and

(ii) The ambit of the words "an application for judicial review" in O. 53 r. 8(1).

Two Stages Under O. 53

[17] It is trite procedural law that judicial review proceedings under O. 53 consists of two stages. The first stage, set out in O. 53 r. 3(1), necessitates the obtaining of leave, as "No application under this order shall be made unless leave therefor has been granted in accordance with this rule". At this threshold stage, the grant or refusal of leave is considered. The second stage is regulated by O. 53 r. 4(1) and (2), concerning the substantive application for judicial review after leave has been granted. Under O. 53 r. 4(1), the substantive applicant is required to file a notice in Form IIIB. Under O. 53 r. 4(2), upon extraction of the sealed copy of Form IIIB, the applicant must serve a copy thereof together with a copy of the statement and all affidavits in support on all persons directly affected by the application not later than 14 days before the date of hearing specified therein. In a minority judgment in *Chin Mee Keong & Ors v. Pesuruhjaya Sukan* [2007] 5 CLJ 363 CA at [56] to [58], I took the opportunity to explain this position of two stages under O. 53. A similar sentiment was shown in the separate majority judgments of James Foong JCA (now FCJ) at p. 382 and 383 in [25] to [28] and of Suriyadi Halim Omar JCA in p. 401 in [92]. (See also *George John v. Goh Eng Wah Bros Film Sdn Bhd & Ors* [1987] 1 LNS 111 per Lim Beng Choon J (as he then was); *Mohd Nordin Johan v. The Attorney-General, Malaysia* [1983] 1 CLJ 130; [1983] CLJ (Rep) 271 per Raja Azlan Shah Ag LP (now HRH the Sultan of Perak); and *Bursa Malaysia Securities Bhd v. Gan Boon Aun* [2009] 5 CLJ 698 CA, paras [21] and [22] at p. 715 and 712 per Heliliah Mohd Yusof JCA (later FCJ)).

Attorney General And Putative Respondent At Threshold Stage

[18] For the purposes of the threshold stage, the provisions of O. 53 r. 3 are relevant and merit reproduction as follows:

> 3. (1) (Referred to in [17] above).
>
> (2) An **application for leave** must be made ex parte to a Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on.
>
> (3) The applicant must give notice of the **application for leave** not later than three days before the hearing date to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statement and affidavits.
>
> (4) The Judge may, in granting leave, impose such terms as to costs and as to the giving of security as he thinks fit.
>
> (5) The grant of leave under this rule shall not, unless the Judge so directs, operate as a stay of the proceedings in question.
>
> (6) An **application for judicial review** shall be made promptly and in any event within 40 days from the date when grounds for the application first arose or when the decision is first communicated to the **applicant** provided that the Court may, upon application and if it considers that there is a good reason for doing so, extend the period of 40 days. (Emphasis added)

[19] It is abundantly clear to us that the whole of O. 53 r. 3 deals with the requirement for leave at the threshold stage. The word "application" appearing in O. 53 r. 3(6) must therefore be construed as referring to the threshold stage only. In *R v. Stratford-On-Avon District Council and Another, ex parte Jackson* [1985] 3 All ER 769 CA, one of the questions which the (UK) Court of Appeal has to answer was whether the time limit of three months in O. 53 r. 4(1) (UK) (40 days in our O. 53 r. 3(6)) referred to the leave application at the threshold stage or the substantive motion. Ackner LJ who spoke for the (UK) Court of Appeal held at p. 772a-c that in practice the (UK) courts

A treated it as the application for leave. His Lordship considered this as the only possible course from a practical point of view and the only sensible construction which can be given to the rule, as it is not possible for an applicant to launch his substantive application for relief until the court has been able to dispose of his application
B for leave. That view was approved by the House of Lords in *Caswell And Another v. Dairy Produce Quota Tribunal For England And Wales* [1990] 2 All ER 434, 439b where Lord Goff delivered the speech for the House and held that the words "an application for judicial review" in s. 31(6) and (7) of the Supreme Court Act
C 1981 (UK) must be read as referring, where appropriate, to an application for leave to apply for judicial review.

[20] Under our O. 53 r. 3(3), at the threshold stage, the applicant must give notice of the application for leave not less than
D three days before the hearing date to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statement and affidavits. That being the case, the Attorney General has the *locus standi* to appear at the threshold stage of an application for judicial review: See eg. *Kanawagi*
E *Seperumaniam v. Dato' Abdul Hamid Mohamad* [2004] 5 MLJ 495 HC per Faiza Tamby Chik J (as he then was) at p. 500 [4].

[21] On the other hand, the judge may, at the *ex parte* leave stage, invite the putative respondent to attend and make
F representations as to whether or not leave should be granted. Such invitation is normally extended where, on considering the papers, the judge comes to the conclusion that he really does not know whether there is or is not an arguable case: *R v. Secretary of State for the Home Department, Ex Parte Rukshanda Begum* [1990]
G Crown Office Digest 109, DIP, CA (UK) per Lord Donaldson MR, as applied by the (then) Supreme Court in *Tuan Sarip Hamid & Anor v. Patco Malaysia Berhad* [1995] 3 CLJ 627, 633 per Edgar Joseph JR FCJ (as he then was). However, the putative respondent is not entitled as a matter of right to appear and
H demand to be heard: *Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors* [2006] 1 CLJ 927 p. 945 [14] per Zaleha Zahari JCA (delivering a dissenting judgment) (See also my judgment given in the High Court in *Ta Wu Realty Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor* [2004] 6 CLJ 398 HC
I at [18]; *R v. Camden London Borough Council, Ex Parte Martin*

[1997] 1 All ER 307 HC; *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Business Ltd* [1982] AC 617 HL, at 642, Lord Diplock; and Michael Supperstone QC and James Goudie QC in *"Judicial Review"* (1997) at pp. 16.4 and 16.6 - 16.7.)

Ambit Of "Application For Judicial Review" In O. 53 r. 8(1)

[22] Having considered and determined the Attorney General's *locus standi* and the invitation that the judge may extend to a putative respondent to be heard at the leave stage, it is now appropriate for us to decide whether other parties or persons may be heard at the threshold stage in opposition to the application for judicial review. Order 53 r. 8(1) may throw some light on this. It reads:

> Other persons who may be heard (O. 53 r. 8)
>
> 8.(1) Upon the hearing of an **application for judicial review**, any person who desires to be heard in opposition to the application and appears to the Judge to be a proper person to be heard may be heard notwithstanding that he has not been served with the cause papers in the matter. (Emphasis added)

[23] In *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307 FC, Zulkefli FCJ explained at p. 319 [26] that a proper person or party who has a direct interest may be joined as a party. The well-considered judgment of his Lordship refers to the "joinder as a party in judicial review" proceedings. However, the parties before the Federal Court did not address the question of whether the "judicial review" proceedings refer to the two stages or to one stage only ie, either the threshold stage or the substantive stage.

[24] Hence, it is our bounden duty to provide an answer. In our view, the resolution thereto depends on the true construction to be placed on the expression "application for judicial review" in O. 53 r. 8(1). The precise meaning of this expression may be crystallized by a careful consideration of the word "application". This word is to be construed by reference to the maxim noscitur a sociis and in such a manner as to take colour and precision from the context in which it appears or is used in O. 53. It is or will be known from its associates.

[25] First of all, it is noteworthy that O. 53 is captioned "application for judicial review". The word "application" in this caption would cumulatively cover the two stages ie, the leave application at the threshold stage as well as the substantive stage after leave has been granted. Similarly, the expression "an application for judicial review" in O. 53 r. 8(1) and (2) would also include the two stages which are the essential characteristics prevailing in an application for judicial review. Leave at the threshold stage is a *sine qua non* to the judicial review proceedings, as the absence of leave would inevitably render the particular judicial review proceedings incomplete and inchoate. By no stretch of imagination can the essential requirement for leave be jettisoned or truncated to leapfrog to the substantive motion. In our view, the submission presented for ASC that leave may be granted to ACE to intervene at the substantive application for judicial review should also apply equally to the threshold stage as well. There is no plausible reason to exclude a proper party or person to be granted leave to intervene as a respondent at the leave stage. In such circumstances, inclusivity rather than exclusivity should be the norm, so as to ensure fairness to the party who has a direct interest in the matter. (I am grateful to my learned brother Mohamed Apandi bin Ali JCA for this input).

[26] In addition, O. 53 r. 8(1) confers upon the judge a wide discretion to hear a proper party or person in opposition to an "application for judicial review" so long as the conditions contained therein have been fulfilled, *viz*:

(1) the person desires to be heard in opposition to the application; and

(2) that person appears to the judge to be a proper person to be heard, notwithstanding that he has not been served with the cause papers in the matter.

[27] In the instant appeal, so long as the judge has demonstrated a proper exercise of discretion under O. 53 r. 8(1), on the basis of the facts and circumstances prevailing in each particular case, and established judicial principles, this court would be slow in embarking on an appellate interference.

[28] It is singularly significant that the 2nd respondent was the recipient of the MOF Approval which is now being challenged by way of judicial review. The 2nd respondent is directly involved in the MOF Approval and will be directly affected by the outcome

of the judicial review proceedings. The 2nd respondent clearly has a direct interest in the outcome of ASC's application for leave at the threshold stage, and so ought to be added as a party to the proceedings. In the context herein, justice and fairness dictate the necessary inclusion of the 2nd respondent as a party to canvass their opposition on a subject matter directly affecting their interest. (I am grateful to my learned brother Syed Ahmad Helmy bin Syed Ahmad for his input). O. 53 r. 8(1) can therefore be invoked to allow the 2nd respondent to appear as a proper party to oppose ASC's application at the leave stage. We are of the view that the learned High Court judge has correctly exercised the discretion under O. 53 r. 8(1). We are therefore unable to sustain the submission advanced for ASC.

Conclusion

[29] We answered the above question in the affirmative. We found no merit in this appeal which we dismissed accordingly. The High Court order was affirmed. We awarded costs of RM2,000 to the 1st respondent and RM20,000 to the 2nd respondent. The deposit is to be paid the 2nd respondent on account of the fixed costs.